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In the Supreme Court of the United States

OCTOBER TERM, 1960

GREAT LAKES AIRLINES, INC., CENTRAL AIR TRANSPORT, INC., CURREY AIR TRANSPORT LIMITED, TRANS-ALASKAN AIRLINES, INC., PETITIONERS

v.

CIVIL AERONAUTICS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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INDEX

	Page
Opinion Below	1
Jurisdiction	2
Questions Presented	2
Statutes Involved	3
Statement	3
Argument	11
Conclusion	17
Appendix	18

CITATIONS

Cases:

All American Airways, Inc. v. *United Air Lines, Inc.*, 364 U.S. 297 — 15

Cook Cleland Catalina Airways v. *Civil Aeronautics Board*, 195 F. 2d 206 — 6

Federal Communications Commission v. *WOKO, Inc.*, 329 U.S. 223 — 13

Great Lakes Airlines, Inc. et al., C.A. 9, v. *Civil Aeronautics Board*, C.A. D.C., No. 16,165 — 16

Great Lakes Airlines, et al. v. *Civil Aeronautics Board*, No. 16,672 — 13

Independent Broadcasting Co. v. *Federal Communications Commission*, 193 F. 2d 900 certiorari denied, 344 U.S. 837 — 14

Large Irregular Carriers, Exemptions, 11 C.A.B. 609 — 6

Pan-Atlantic Steamship Corporation v. *Atlantic Coast Line Railroad*, 353 U.S. 436 — 12

Statutes and regulations:

Administrative Procedure Act, 5 U.S.C. 1001 *et seq.*:

Section 7(c) — 14

Section 9(b) — 11, 12, 13, 14

Civil Aeronautics Act of 1938, 52 Stat. 973, 49 U.S.C. 401 *et seq.*:

Section 401 — 4, 5

Section 416 — 3

Statutes and regulations—Continued

	Page
Federal Aviation Act of 1958, 72 Stat. 731, 49 U.S.C. 1301, *et seq.*	3, 18
Section 101	18
Section 401	19
Section 416	19
Section 801	20
The Act of July 14, 1960, 74 Stat. 527 (P.L. 86-661)	15, 21
14 C.F.R. (1938 Supp.) 292.1	3
14 C.F.R. (1947 Supp.) 292.1	4
Miscellaneous:	
106 Cong. Rec. 14270	16
106 Cong. Rec. 14481	16

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OPINIONS BELOW

The opinions in the United States Court of Appeals for the District of Columbia Circuit (Pet. App. B) are not yet reported. The findings and orders of the Civil Aeronautics Board (R. 1100A-1252A, 1273A-1279A, 1346A-1387A) are not yet reported.

JURISDICTION

The judgment of the Court of Appeals was entered on February 24, 1961, and a petition for rehearing was denied on March 21, 1961. The petition for a writ of certiorari was filed on April 21, 1961. The jurisdiction of this Court is invoked under 49 U.S.C. 1486(f) and 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

The Civil Aeronautics Board, from 1938, authorized "non-scheduled" or "irregular" operations under a series of interim general exemption orders or regulations. These exemptions were subject to alteration or termination in the public interest, and, since 1947, to revocation as to individual carriers for violations. In 1949, the Board terminated the then existing interim general exemption on finding that the carriers operating thereunder should be subjected to individual scrutiny in the light of the statutory public interest and exemption criteria, but it temporarily extended the carriers' prior authorizations (unless sooner revoked for cause) until disposition of the applications for individual exemption authority. After extensive hearings, the Board denied petitioners' applications on the ground of lack of fitness, evidenced by records of prior violations of the Civil Aeronautics Act and the Board's regulations. The questions presented are:

1. Whether Section 9(b) of the Administrative Procedure Act precluded the termination or ending

of petitioners' prior operating authority in a proceeding other than one for revocation of their individual authority instituted after specific notice of violations and an opportunity to achieve compliance had been given.

2. Whether, in the absence of any showing of actual prejudice or lack of opportunity to defend, due process required that the Board in this licensing proceeding provide the petitioners, prior to hearing, with detailed charges of all specific violations ultimately found, or thereafter reopen the record to provide another opportunity for rebuttal evidence pertaining to the specific violations.

STATUTES INVOLVED

The relevant provisions of the Federal Aviation Act, the Administrative Procedure Act, and P.L. 86-661, are set forth in the Appendix, *infra*, pp. 18-23.[1]

STATEMENT

In 1938, shortly after the effective date of the Civil Aeronautics Act, the Civil Aeronautics Board promulgated a regulation (14 C.F.R. (1938 Supp.) 292.1) under Section 416 of the Act (*infra*, pp. 19-20) exempting certain categories of carriers from the necessity of obtaining a certificate of convenience and

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[1] The original statute was the Civil Aeronautics Act of 1938 (52 Stat. 973, 49 U.S.C. 401 *et seq.*). This was superseded on December 31, 1958, by the Federal Aviation Act (72 Stat. 731, 49 U.S.C. 1301 *et seq.*). There was no material change in the provisions here relevant.

necessity pursuant to Section 401 of the Act. This regulation was designed to relieve so-called fixed-base operators from the certification process as a prerequisite to conducting "charter" and "air taxi" operations with the small aircraft utilized in other aeronautical enterprises such as flight training, crop dusting, etc. The regulation remained substantially unchanged at the close of World War II, and many persons, including petitioners, availed themselves of its privileges to begin operations with large transport-type aircraft then made available to civilian buyers from war surplus.

In 1947, the Board promulgated (through the rule-making process) a comprehensive revision (14 C.F.R. (1947 Supp.) 292.1). It subjected these carriers to many provisions of the statute from which they had theretofore been exempt, and required them to obtain "letter[s] of registration" as a prerequisite to operations. Such letters were issued to all carriers requesting them, upon the submission of an appropriate application, and merely evidenced the operating authority conferred by the new regulation. The regulation precluded the carriers from holding out or operating "regularly or with a reasonable degree of regularity", and flights were required to be "of such infrequency as to preclude an implication of a uniform pattern or normal consistency of operation" between any two points. Letters of registration were subject to revocation for cause, and the regulation also provided that such a letter "unless otherwise sooner rendered ineffective, shall expire and be of no further force and effect, upon a finding by the Board that enforcement

of the provisions of Section 401 [the certificate provision] (from which exemption is provided in this section) would be in the public interest and would no longer be an undue burden on such irregular air carriers or class of irregular air carriers." Petitioners sought and obtained letters of registration under this regulation.

In 1949, the Board again revised the regulation by rule-making methods (R. 1399A-1416A). It determined that the public interest no longer warranted the blanket exemption, and that permission to utilize large aircraft in irregular air service should be granted only where (a) there was a demonstrated need for such service, and (b) the Board could define the scope of the carrier's authority with more particularity than under a blanket authorization (R. 1403A). To carry out this policy, the Board provided that the carriers should file individual exemption applications, and that upon such timely filing their prior letters of registration should continue in force "until, but only until" (R. 1413A) disposition of the individual applications. Petitioners filed such applications.

The findings accompanying the 1949 regulation terminating the blanket exemption stated that "[o]ne of the factors which the Board would take into consideration in disposing of" the individual applications for exemption "is the extent to which the applicant had engaged in regular operations and had otherwise failed to comply with the requirements of the Act and the Board's regulations" (R. 1403A-1404A). Thereafter, the Board commenced processing the various

applications on an individual basis. It granted some and denied others, taking into account, *inter alia*, the legality of the prior operations, as its 1949 regulation had provided (see Pet. p. 15a).

Some individual applications, including those of the petitioners, were being heard or had been assigned for hearing on an individual basis when, in September 1951, the Board instituted the *Large Irregular Air Carrier Investigation* (R. 1A) to determine the future role of the irregular carriers in a single proceeding, instead of case by case. This proceeding was to decide (1) the appropriate place, if any, of the large irregulars in the national air transportation system and the extent of the operations they should be permitted to conduct, (2) the carriers to receive operating authority, and (3) whether authorization should be by certificate of public convenience and necessity pursuant to Section 401 of the Act. Then pending applications for individual exemption were consolidated into the new proceeding, and those already granted (see *Large Irregular Carriers, Exemptions*, 11 C.A.B. 609) were reopened and likewise consolidated. The Board again specifically stated that evidence of past violations would be received as "relevant in a proceeding on an application for operating authority" (R. 19A) and rejected proposals that evidence be excluded with respect to violations occurring prior to the date of the institution of the proceeding

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[2] See *Large Irregular Air Carriers, Exemptions*, 11 C.A.B. 609, (1950); *Cook Cleland Catalina Airways* v. *Civil Aeronautics Board*, 195 F. 2d 206 (C.A.D.C.)

(R. 19A-20A).[3] It made clear that a denial of an application in the consolidated proceeding would result in termination of the existing operating authority under the 1949 regulation (*supra*, p. 5) (R. 24A-26A).

There followed more than a year of hearings, in which the qualifications of petitioners Great Lakes, Currey, and Central were considered at length; Board counsel and other parties introduced evidence as to their past violations and the three petitioners introducing contrary evidence.

In January 1954, the Board suspended hearings on individual applications in order to proceed immediately to decision on the general role to be assigned to this class of carriers, with further proceedings to follow at a later date on the issue of the qualifications of individual applicants. The general nature of future operations was decided in November 1955 by Order E-9744 (R. 573A). The Board found that these carriers as a class played an important part in the national air transportation system and that the scope of their permissible operations should be enlarged (R. 592A, 605A). As to both interstate and overseas air transportation, the Board substituted broader operating authority in lieu of the narrower authority previously conferred by the 1949 regulations.[4] This new

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[3] The Board stated, however, that prior violations would not constitute a bar to a grant, but rather that they were to be weighed and considered in passing on the applications in the light of all the circumstances (R. 20A).

[4] The Board determined that the carriers should be permitted to conduct unlimited charter flights and not to exceed ten round trips per month for individually-ticketed pas-

authority, too, was on an interim basis, and was to expire "60 days after the Board makes a final disposition of the application or applications of each such carrier in this proceeding" (R. 624A). Petitioners, together with all the other affected carriers, received the new interim authorization, and have since operated under it.

As already indicated, when the Board decided in January 1954 to proceed first to decision on the general role of this class of carriers, some of the present applicants had been heard on their qualifications. The examiners' initial decision of March 29, 1955, in addition to making recommendations on the general issues, contained findings on the qualifications of those applicants. They found that petitioners Great Lakes (R. 516A-533A), Currey (R. 502A-516A), and Central (R. 444A-455A) were not "suitable" applicants for permanent authority because of past violations. The Board, however, in directing resumption of the hearings, in August 1955, vacated the examiners' findings on the qualifications of the applicants who had been heard in the early phases of the proceeding (R. 864A) and directed the examiners to make new findings on this issue. Consequently, the Board made no findings on qualifications in its general November 1955 order, but instead awarded interim exemptions to all applicants, and remitted the problem of individual qualifications for further proceedings. At the subsequent hearing, Great Lakes

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senger or waybilled cargo flights (except that passengers could not be carried on either a charter or individual basis in service between the United States and foreign points).

(R. 1023A)[5] and Central (R. 956A) adduced additional evidence, but Currey did not (R. 1033A). Petitioner Trans-Alaskan was heard only in the part of the proceeding subsequent to the Board's order of November 1955.

Following briefs to the examiners, an examiners' decision (June 1957), and briefs to, and oral argument before, the Board, the Board issued, on January 28, 1959, its Order E-13433 granting and denying numerous applications for certificates to conduct supplemental service in domestic operations. The petitioners were among those carriers whose applications were denied (there were 23 denials in all, see R. 1276-1277A) and their interim domestic authority was thereby terminated. The ground for the Board's denial of the petitioners' applications was their lack of "compliance disposition", evidenced by their prior violations.[6]

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[5] The Board authorized the taking of further testimony on the question of Great Lakes' relationship to Currey, though this was a matter which had been canvassed at the first hearing. Great Lakes' testimony related to this question plus certain alleged changes in its organization since the first hearing. Central's new evidence was of this latter variety.

[6] Great Lakes, Currey and Trans-Alaskan had combined their activities under single control and ownership to provide regular transcontinental airline services notwithstanding that their authorizations were to engage only in highly irregular service.

In terms of specific violations, Great Lakes and Currey were found to have violated Sections 401(a), 403(b), 408(a), and 1005(e) under circumstances which led the examiners to say that their violations were "so wanton and deliberate that there is no basis in this record for concluding

Subsequent to the issuance of the second examiners' opinion in June 1957, a number of the applicants, including petitioners Great Lakes, Currey and Trans-Alaskan, filed a motion to reopen the record to bring it up to date (R. 1499A). This was denied by the Board on November 8, 1957 (R. 1087A-1091A). On November 19, 1957, Great Lakes and Currey filed a further motion for leave to introduce certain evidence which had been adduced in the concurrent proceeding looking toward revocation of their authorizations (see fn. 9, *infra*, p. 13). This was denied by the Board in its final decision of January 28, 1959, on the ground that the evidence sought to be adduced was merely cumulative and that in any event it would have reached the same results without giving any consideration to the matter to which the evidence pertained (R. 1200A-1201A). In their petitions for reconsideration of the Board order denying their applications, petitioners argued that its failure to reopen

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that they could be expected to abide by the law in the future * * *, so serious in nature that they far outweigh any possible benefits that might accrue to the public from [their] service * * *" (R. 1032A-1033A). Trans-Alaskan was found to have committed willful and deliberate violations of Sections 408(a) and 412(a) by turning over its operations to the persons controlling Great Lakes and Currey (R. 1053A). Central was found to have participated in a number of illegal control relationships which represented "a well-established pattern on applicant's part of renting out its economic authority * * * while sitting back and collecting such returns as the use of its authorization may bring" (R. 1188A-1189A).

In the court below, petitioners challenged neither these findings nor their evidentiary support.

the record was error. This claim was rejected by the Board in denying the rehearing petitions on September 15, 1959 (R. 1356A-1357A).

On review, the court of appeals (with Judge Fahy dissenting) affirmed as to these petitioners.[7] It held that the Board's proceeding was essentially a licensing rather than a compliance proceeding; that petitioners' prior operating authority had not been revoked for past misconduct but had expired upon their being found unqualified for future authority in the present proceeding; and hence that the prior authority had not been "withdrawn, suspended, revoked, or annulled within the meaning of Section 9(b) of the Administrative Procedure Act" (Pet. 11a). The court also found that the petitioners were afforded notice that violations would be considered; that they had opportunity to introduce direct evidence, to cross-examine, and to submit rebuttal evidence; and that in a proceeding of this kind due process required no more.

ARGUMENT

This petition raises questions which do not warrant review by this Court because they are applicable mainly to the special situation presented by this complex proceeding. Moreover, the decision of the court of appeals was correct and does not conflict with the ruling of any other court.

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[7] The court reversed the Board as to the disposition of the application of one carrier, Air Cargo Express, (Pet. 21a), and certiorari is not being sought by the government as to this aspect of the case.

1. Petitioners contend that their operating authority was terminated as a result of the Board's refusal to grant their application for permanent certificates and therefore that the proceedings were subject to the requirements of the second sentence of Section 9(b) of the Administrative Procedure Act providing that, with certain exceptions, no license shall be withdrawn, suspended, revoked or annulled unless prior to the institution of the proceeding "facts or conduct which may warrant such action shall have been called to the attention of the licensee by the agency in writing and the licensee shall have been accorded opportunity to demonstrate or achieve compliance with all lawful requirements." App., *infra*, p. 21. In this connection, petitioners cite the decision of this Court in *Pan-Atlantic Steamship Corporation* v. *Atlantic Coast Line Railroad*, 353 U.S. 436, as holding that the authorizations they held were licenses within the meaning of Section 9(b). But assuming this to be the case,* the flaw in the argument is that any "licenses" petitioners might have had were not revoked,

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* The majority of the court below stated that "Section 9(b) was not intended to apply to temporary licenses" of the type here involved (Pet. App. 13(a)-14(a)). But this statement was not the basis for its holding but an observation as to what the court believed would be the situation "even if" Section 9(b) were otherwise applicable (*ibid.*).

If petitioners' outstanding authorizations were "licenses", they would of course be entitled by the third sentence of Section 9(b) to continue operating pursuant to these licenses until such time as the Board had finally passed upon their applications for new or renewed authority. But such operational authority was afforded them here.

suspended, annulled or withdrawn by any Board action but expired by their own terms upon completion of this proceeding to pass upon petitioners' applications for permanent operating authority. As the Statement, *supra*, pp. 4-8, makes clear, carriers of petitioners' class have long understood that prior interim authority would end at the close of the present proceeding, and that they would no longer have the legal right to operate under the old grant.

This proceeding, whether it be characterized as one for new licenses or for renewed (but modified) licenses, is not the type of revocation proceeding covered by the second sentence of Section 9(b). The focus is upon the future not the past, and upon petitioners' qualifications for prospective service under the new authority. The fact that the circumstances which led the Board to deny petitioners' applications —their past history of violations of the Act and the Board's regulations—might also form the basis for revoking their outstanding authorizations[9] does not convert this case into a revocation proceeding or one in which the special statutory procedures for revocation must be applied. *Federal Communications Commission* v. *WOKO, Inc.*, 329 U.S. 223; *Independent Broadcasting Co.* v. *Federal Communications Com-*

[9] The Board did institute compliance proceedings against the petitioners Great Lakes and Currey during the pendency of the instant proceeding, and the Court of Appeals for the Ninth Circuit affirmed the Board's revocation order on May 4, 1961. *Great Lakes Airlines, et al.* v. *Civil Aeronautics Board*, C.A. 9, No. 16,672. The court there held that the second sentence of Section 9(b) was inapplicable in view of the willful character of the violations.

mission, 193 F. 2d 900 (C.A.D.C.), certiorari denied, 344 U.S. 837. Nor is there any question as to the propriety of the Board's considering the past compliance history of an applicant in determining its future qualifications to be a licensee under the new authority.

2. Although the hearings on the petitioners' applications were not revocation proceedings subject to the second sentence of Section 9(b), petitioners were given a full opportunity to meet all evidence of prior violations introduced before the examiners. Section 7(c) of the Administrative Procedure Act provides that in agency proceedings "Every party shall have the right to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts." The Board, in denying petitioners' applications to reopen, expressly found that the present proceedings met these requirements (R. 1351A-1352A, 1356A-1357A; 1197A-1198A, see pp. 10-11 *supra*). This is not controverted by petitioners. They insist, however, that because the Board denied their applications on the basis of specific past misconduct due process requires the reopening of the proceeding to allow them to introduce further evidence in rebuttal of the Board's findings. But the protections of Section 7(c) were at all times adequate, and petitioners had full opportunity to present their case, both generally and specifically. They were given express notice that evidence of prior violations would be considered by the Board (R. 19A-20A, see pp. 5, 6-7 *supra*), and were afforded adequate chance to rebut

all such evidence introduced in the course of the hearings, including the proof of specific violations which was offered. We submit that the court of appeals was clearly correct in concluding that due process requires no more.

3. Finally, petitioners suggest here, as they did below, that the court of appeals should be directed to retain jurisdiction over these cases until opportunity has been afforded for further Congressional legislation with respect to supplemental air service. They rely on *All American Airways, Inc.* v. *United Air Lines, Inc.*, 364 U.S. 297, where this Court directed such action with respect to those supplemental carriers whose applications had been granted by the Board, but were subsequently set aside by the court of appeals on the ground that the Board lacked authority to certificate any such carrier. Subsequent to the Court of Appeals' action in that case Congress adopted Public Law 86-661 (App., *infra*, pp. 21-23), which empowered the Board to validate certificates of the successful applicants for supplemental air carrier authority for a period of 20 months or until Congress could adopt permanent legislation on the subject. It was for this reason that the government suggested the course of action which this Court followed in the *All American* case, *supra*. But while Public Law 86-661 also authorized the Board to "confer interim operating authority" for supplemental air carriage upon persons who had operated as supplemental air carriers pursuant to the Board's 1955 temporary authorization or had applications for certification pend-

ing,[10] the legislative history of that Act makes it clear that judicial affirmance of the Board's order with respect to the present petitioners would result in termination of their outstanding operating authority (106 Cong. Rec. 14481) and that the outcome of this case was not to be affected by the enactment of Public Law 86-661 (106 Cong. Rec. 14270).[11]

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[10] After the enactment of Public Law 86-661, petitioners Great Lakes, Currey and Trans-Alaskan filed new applications for supplemental certificates pursuant to the purported authority of that Act and the Federal Aviation Act of 1958, as amended. These applications were dismissed by the Board and a petition for review of that determination is now pending in the Court of Appeals for the District of Columbia Circuit (*Great Lakes Airlines, Inc.* v. *Civil Aeronautics Board*, C.A.D.C., No. 16,165).

[11] Congressman Williams, one of the House managers, referred specifically to Great Lakes, Currey and Trans-Alaskan, and stated: "Their case is presently in litigation * * *. This bill is not applicable to them. So they will be in the same status as if this bill had not passed. It does not jeopardize their position and it does not grant them any additional rights."

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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APPENDIX

1. The provisions of the Federal Aviation Act of 1958, 72 Stat. 731 (49 U.S.C. 1301 *et seq.*) principally involved are:

DEFINITIONS

Sec. 101. [72 Stat. 737, 49 U.S.C. 1301] As used in this Act, unless the context otherwise requires—

* * * *

(21) "Interstate air transportation", "overseas air transportation", and "foreign air transportation", respectively, mean the carriage by aircraft of persons or property as a common carrier for compensation or hire or the carriage of mail by aircraft, in commerce between, respectively—

(a) a place in any State of the United States, or the District of Columbia, and a place in any other State of the United States, or the District of Columbia; or between places in the same State of the United States through the airspace over any place outside thereof; or between places in the same Territory or possession of the United States, or the District of Columbia;

(b) a place in any State of the United States, or the District of Columbia, and any place in a Territory or possession of the United States; or between a place in a Territory or possession of the United States, and a place in any other Territory or possession of the United States; and

(c) a place in the United States and any place outside thereof; whether such commerce moves wholly by aircraft or partly by aircraft and partly by other forms of transportation.

* * * *

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

Certificate Required

Sec. 401. [72 Stat. 754, 49 U.S.C. 1371] (a) No air carrier shall engage in any air transportation unless there is in force a certificate issued by the Board authorizing such air carrier to engage in such transportation.

* * * *

Issuance of Certificate

(d) (1) The Board shall issue a certificate authorizing the whole or any part of the transportation covered by the application, if it finds that the applicant is fit, willing, and able to perform such transportation properly, and to conform to the provisions of this Act and the rules, regulations, and requirements of the Board hereunder, and that such transportation is required by the public convenience and necessity; otherwise such application shall be denied.

* * * *

CLASSIFICATION AND EXEMPTION OF CARRIERS

Classification

SEC. 416. [72 Stat. 771, 49 U.S.C. 1386] (a) The Board may from time to time establish such just and reasonable classifications or groups of air carriers for the purposes of this title as the nature of the services performed by such air carriers shall require; and such just and reasonable rules and regulations, pursuant to and consistent with the provisions of this title, to be observed by each such class or group, as the Board finds necessary in the public interest.

Exemptions

(b) (1) The Board, from time to time and to the extent necessary, may (except as provided in paragraph (2) of this subsection) exempt from the requirements of this title or any provision thereof, or any rule, regulation, term, condition, or limitation prescribed thereunder, any air carrier or class of air carriers, if it finds that the enforcement of this title or such provision, or such rule, regulation, term, condition, or limitation is or would be an undue burden on such air carrier or class of air carriers by reason of the limited extent of, or unusual circumstances affecting, the operations of such air carrier or class of air carriers and is not in the public interest.

* * * *

THE PRESIDENT OF THE UNITED STATES

SEC. 801. [72 Stat. 782, 49 U.S.C. 1461] The issuance, denial, transfer, amendment, cancellation, suspension, or revocation of, and the terms, conditions, and limitations contained in, any certificate authorizing an air carrier to engage in overseas or foreign air transportation, or air transportation between places in the same Territory or possession, or any permit issuable to any foreign air carrier under section 402, shall be subject to the approval of the President. Copies of all applications in respect of such certificates and permits shall be transmitted to the President by the Board before hearing thereon, and all decisions thereon by the Board shall be submitted to the President before publication thereof.

2. The relevant provisions of the Administrative Procedure Act, 60 Stat. 237 (5 U.S.C. 1001 *et seq.*) are:

SEC. 9. [60 Stat. 242; 5 U.S.C. 1008] In the exercise of any power or authority—

* * * *

Sanctions and Powers

(b) Licenses.—In any case in which application is made for a license required by law the agency, with due regard to the rights or privileges of all the interested parties or adversely affected persons and with reasonable dispatch, shall set and complete any proceedings required to be conducted pursuant to sections 7 and 8 of this Act or other proceedings required by law and shall make its decision. Except in cases of willfulness or those in which public health, interest, or safety requires otherwise, no withdrawal, suspension, revocation, or annulment of any license shall be lawful unless, prior to the institution of agency proceedings therefor, facts or conduct which may warrant such action shall have been called to the attention of the licensee by the agency in writing and the licensee shall have been accorded opportunity to demonstrate or achieve compliance with all lawful requirements. In any case in which the licensee has, in accordance with agency rules, made timely and sufficient application for a renewal or a new license, no license with reference to any activity of a continuing nature shall expire until such application shall have been finally determined by the agency.

3. The Act of July 14, 1960, 74 Stat. 527 (P.L. 86-661) provides in relevant part as follows:

* * * That the Civil Aeronautics Board (hereafter in this Act referred to as the "Board") is empowered—

(1) to validate for a period not to exceed twenty months from the date of enactment of

this Act, without further proceedings, any temporary certificate of public convenience and necessity for supplemental air transportation issued pursuant to Board Order E-13436 of January 28, 1959, or Board Order E-14196 of July 8, 1959, which certificate has not been revoked or otherwise terminated by the Board on or before the date of enactment of this Act; and

(2) to confer interim operating authority to engage in supplemental air transportation for a period not to exceed twenty months from the date of enactment of this Act upon any person or air carrier which (A) has operated in interstate air transportation as a supplemental air carrier pursuant to authority granted under Board Order E-9744 of November 15, 1955, or (B) has an application for a certificate as a supplemental air carrier pending before the Board on the date of enactment of this Act.

SEC. 2. (a) Nothing in this Act shall be construed to affect the authority of the Board—

(1) to maintain any enforcement or compliance proceeding or action against the holder of a certificate of public convenience and necessity issued pursuant to Board Order E-13436 of January 28, 1959, or Board Order E-14196 of July 8, 1959, or against the holder of any operating authority conferred under Board Order E-9744 of November 15, 1955, which proceeding or action is pending before the Board on the date of enactment of this Act; or

(2) to institute, on or after the date of enactment of this Act, any enforcement or compliance proceeding or action against the holder of any certificate or operating authority referred to in paragraph (1) of this subsection with respect to

any violation of (A) the provisions of the Federal Aviation Act of 1958, (B) the provisions of such certificate, (C) the terms of such operating authority, or (D) the regulations of the Board, without regard to when such violation occurred.

Any sanction which the Board lawfully could have imposed on the operating authority of an air carrier for any violation referred to in paragraph (2) of this subsection which occurred before the validation of a certificate of public convenience and necessity for, or before the conferring of any operating authority for, supplemental air transportation under this Act, may be imposed on the operating authority of such air carrier granted under paragraphs (1) or (2) of the first section of this Act.

(b) The authority granted to the Board under this Act shall not affect any other authority of the Board to license air carriers to engage in supplemental air transportation.

(c) Any certificate validated, and any operating authority conferred, by the Board under this Act shall extend to service between the State of Hawaii and the other States of the United States to the extent that such service was authorized pursuant to Board Order E-9744 of November 15, 1955. For the purposes of any such certificate or operating authority, the State of Hawaii shall be considered one point.

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